

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ALFONSO
BUISER, CALIXTO BUISER, AND CRISTETO PANDIALAN,
DEFENDANTS AND APPELLANTS.**

G.R. No. 10587. December 06, 1915

Ponente: ARAULLO, J.

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ARAULLO, J.:

These proceedings were brought against the above defendants in the Court of First Instance of Laguna for the crime of robbery, on complaint of the provincial fiscal dated September 16, 1914, which reads as follows:

"The undersigned charges Alfonso Buiser, Calixto Buiser, and Cristeto Partdialan with the crime of robbery committed as follows:

"That on or about the 30th of March, 1914, in the municipality of San Pablo, Province of Laguna, P. I., the above accused did, wilfully, unlawfully and maliciously, by means of force and intimidation upon persons, with abuse of superior strength, and armed with revolvers, remove, seize, and appropriate to themselves with the intent of unlawful gain, the sum of P200, a gold ring with a diamond setting, worth P100, another gold ring valued at P15, and a Borsalino felt hat worth P5, belonging to Pedro Ramos, the said accused effecting such removal, seizure, and appropriation of the sum of money and articles aforementioned against the will and to the prejudiced of their owner, the said Pedro Ramos.

"Acts committed in violation of law and attended by the ninth aggravating circumstance of article 10 of the Penal Code."

On arraignment the accused pleaded not guilty. After due trial judgment was rendered by the said court, on December 28 of the same year, in which it was held that in accordance with the facts proven the crime committed by the defendants was not that of robbery but that of the discharge of firearms, of which the said defendants were guilty; and that they were also guilty of inflicting injuries upon one of the offended parties, which were cured in five days without leaving any disability or physical defect whatever. The court therefore sentenced each of the defendants, for the said crime of discharge of firearms, to the penalty of one year eight months and twenty-one days of *prisi&n* correctional, with the corresponding accessory penalties, each to pay one-third of the costs.

The defendants moved for the vacation of the said judgment and a rehearing; they prayed that, in place of the said judgment, another be rendered freely absolving them from the complaint, on the ground that the charge against them was for the crime of robbery, against which only they had an opportunity to defend themselves; that the facts alleged in the complaint did not constitute the crime mentioned of the discharge of firearms, nor the misdemeanor of *leaiones leves*; and that they had not been arraigned under any complaint whatever for the said crime and *misdeameanor*. Upon denial of the said motion, the defendants excepted and appealed from the judgment referred to, and allege in their appeal in this instance the same grounds they advanced for the vacation of the judgment and the rehearing in the trial court.

The complaint filed against the defendants, as seen by its phraseology, was for the crime of robbery, and they

were arraigned for this crime only.

In order to convict the defendants of an offense distinct from that charged in the complaint, such offense should necessarily have been included in that specified in the text or body of the complaint, even though it were different from, and more or less serious than the crime set forth in the caption or heading of the complaint. This court has repeatedly so held, and section 29 of General Orders No. 58 so prescribes, in saying that: "The court may find the defendant guilty of any offense, or of any frustrated or attempted offense, the commission of which is necessarily included in the charge in the complaint or information."

The complaint in question states that the defendants were armed with revolvers, but it does not say that they discharged these weapons, or that the defendants exerted violence and intimidation upon the persons of the offended parties by discharging the revolvers with which they were armed.

Even though it had been proven at the trial, as the lower court in the judgment appealed from gave to understand that it was, that the persons who, were then armed with revolvers discharged them, still the defendants should not have been sentenced for the said offense of the discharge of firearms, on a complaint charging them with the crime of robbery, because the former offense is not necessarily included in the latter; and, although the discharge of a firearm may be an act of violence or of intimidation for the commission of a robbery, yet, for the perpetration of a robbery it is not absolutely necessary to discharge a firearm. It is sufficient that there be some act of violence or intimidation upon the person from whom the assailant attempts to take something.

For the foregoing reasons, we dismiss this proceedings for the crime of robbery and set aside the judgment appealed from, with the costs de oficio. So ordered.

Torres, Johnson, Carson, and Trent, JJ., concur.

Judgment set aside and case dismissed.

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